IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Crl.MC.No. 3056 of 2007()

CC.155/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

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PETITIONER:

SHARAFUDHEEN, AGED 29 YEARS,
S/O.LATE MUHAMMED, NECHIKKANDAN,
KOOTTILANGADI, DISTRICT KOZHIKODE.

BY ADV. SRI.K.M.SATHYANATHA MENON
SMT.S.SMITHA (PARAKKAL)

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
PERINTALMANNA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3056 of 2007

Dated this the 4th day of October 2007

O R D E R

The petitioner faces indictment in a prosecution for the offence punishable under Section 472 read with 34 I.P.C. Altogether there were three accused persons. Cognizance was taken. The case was registered. The petitioner was not available for trial. The trial against accused 1 and 2 proceeded. They have been found not guilty and acquitted. The case against the petitioner has been split up and refiled. As the petitioner was not available, the trial against the petitioner has not started. He has not appeared before the learned Magistrate so far. Consequently the coercive processes have been issued against the petitioner. The petitioner has now come back to India on 9/9/2007. The petitioner, in these circumstances, has come to this court with two prayers. First of all, it is prayed that the proceedings against the petitioner may be quashed. Alternatively it is prayed that there may be a direction for expeditious disposal of the case against him.

2. First of all, in the light of the decision of the Full

Bench in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] I find absolutely no reason to invoke the powers under Section 482 Cr.P.C in favour of the petitioner who has been absconding all along. The extraordinary inherent jurisdiction, I am satisfied, does not deserve to be invoked in favour of the petitioner.

3. The petitioner can of course appear before the learned Magistrate and pray for premature termination of proceedings by invoking the powers of discharge under Section 239 Cr.P.C. That prayer has got to be considered by the learned Magistrate. According to the petitioner, he has to leave for his place of employment in November 2007. He, therefore, wants a direction to be issued for expeditious disposal of the case.

4. The petitioner must first of all appear before the learned Magistrate. He must apply for regular bail. His application for regular bail, needless to say, must be considered by the learned Magistrate, on merits, in accordance with law and expeditiously as already been held in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339]. Such application must be disposed of on the date of surrender itself.

5. Once the petitioner secures bail, the petitioner can certainly make a request to the learned Magistrate to expeditiously consider the petitioner's claim for premature termination of proceedings by discharge under Section 239 Cr.P.C. Needless to say, such prayer must also be considered by the learned Magistrate expeditiously. I find no necessity to issue any specific directions in favour of the petitioner who has not chosen to appear before the learned Magistrate so far. If the petitioner appears and makes an application, needless to say, the learned Magistrate must consider the prayer for expeditious disposal.

6. With the above observations, this Criminal Miscellaneous Case is dismissed.

7. Hand over copy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007